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JEANNE E. LONGMUIR			MULLER, BRYAN R	
2836 CORYDON ROAD			ART UNIT	PAPER NUMBER
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The time period for reply, if any, is set in the attached communication.

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4 UNITED STATES PATENT AND TRADEMARK OFFICE
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7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
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11 *Ex parte* JAMES A. KOVACH
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14 Appeal 2008-1678
15 Application 10/602,406
16 Technology Center 3700
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19 Decided: September 26, 2008
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22 *Before* MURRIEL E. CRAWFORD, LINDA E. HORNER, and ANTON W.
23 FETTING, *Administrative Patent Judges*.
24 CRAWFORD, *Administrative Patent Judge*.
25
26

27 DECISION ON APPEAL
28

29 STATEMENT OF CASE

30 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
31 of claims 10, 11 and 19-22. We have jurisdiction under 35 U.S.C. § 6(b)
32 (2002).

1 Appellant invented a drain spud wrench (Specification 1).

2 Claim 10 under appeal reads as follows:

3 10. A drain spud wrench, comprising:

4 a) a wrench body having a longitudinal axis;

5 b) a first end portion extending from said wrench body

6 having a first plurality of projections that define first and

7 second transverse channels for receiving a cross-shaped

8 portion of a drain spud;

9 c) a first polygonal recess sized to accept a standard sized

10 socket drive defined radially inward and axially spaced

11 from said first and second transverse channels;

12 d) a second polygonal recess that is smaller than said first

13 polygonal recess defined axially inward of said first

14 polygonal recess, said second recess being sized to accept

15 a standard sized socket drive;

16 e) a second end portion extending from said wrench body in

17 a direction opposite from said first end portion, said

18 second end portion includes a second plurality of

19 projections that define third and fourth transverse

20 channels for receiving a cross-shaped portion of a drain

21 spud of second size;

22 f) a third polygonal recess sized to accept a standard sized

23 socket drive defined axially inward of said third and

24 fourth generally transverse channels; and

25 g) a fourth polygonal recess that is smaller than said third

26 polygonal recess defined axially inward of said third

27 polygonal recess, said fourth being sized to accept a

28 standard sized socket drive.

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30 The Examiner rejected claims 10, 11 and 19 to 22 under 35 U.S.C.

31 § 103(a) as being unpatentable over Battrick in view of Machovsky,

32 Bollinger and Duke.

33 The prior art relied upon by the Examiner in rejecting the claims on

34 appeal is:

1 Battrick US 4,237,754 Dec. 09, 1980
2 Duke US Des. 311,315 Oct. 16, 1990
3 Bollinger US 6,269,717 B1 Aug. 07, 2001
4 Machovsky US 6,698,317 B1 Mar. 02, 2004

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7 ISSUES

8 The first issue is whether the Appellant has shown that the Examiner
9 erred in rejecting the claims because Machovsky is a single ended tool not a
10 double ended tool like Battrick.

11 The second issue is whether the Appellant has shown that the
12 Examiner erred in rejecting the claims because Duke does not teach
13 engagement with a socket drive.

14 The third issue is whether the Appellant has shown that the Examiner
15 erred in rejecting the claims because Bollinger is not a spud wrench and is a
16 one ended tool.

17 The fourth issue is whether the Examiner erred in rejecting claims 11,
18 19, 21 and 22 because the Battrick tool includes a hollow tube and therefore
19 does not include a solid wrench body.

20 The fifth issue is whether the Appellant has shown that the Examiner
21 erred in rejecting the claims because the use of a second recess in Duke
22 would teach away or destroy the Duke reference.

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FINDINGS OF FACT

2 Battrick discloses a drain spud wrench which includes a wrench body,
3 a first end portion and a second end portion extending from the wrench
4 body. Each of the first and second end portions includes a first plurality of
5 projections that define first and second transverse channels to receiving a
6 cross-shaped portion of a drain spud (col. 3, ll. 22 to 49 and ll. 55 to 61;
7 Figures 1A & 1B).

8 Machovsky discloses a plumbing tool having a first end capable of
9 receiving a cross shaped portion of the drain spud and a second end having a
10 polygonal recess 46 that is sized to accept a conventional socket drive (col.
11 1, ll. 5 to 12; col. 2, ll. 37 to 40; Figure 2).

12 Duke discloses a tub strainer wrench having a first and second end
13 which both include transverse channels and a socket recess (Figures 1, 2, 3
14 and 4).

15 Bollinger discloses a multi-sized tool adaptor that includes two
16 polygonal recesses 22, 24. The outer recess 22 has a larger diameter than
17 the inner cavity 24 so that a smaller drive tool that does not mount within the
18 outer cavity can extend into the inner cavity 24 (col. 2, ll. 61 to 64).

ANALYSIS

21 We agree with the rationale of the Examiner that:

... it further would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the axially aligned polygonal recesses in both ends of the Battwick spud wrench, made obvious by Machovsky and Duke, with a second polygonal recess that is smaller than said

first polygonal recess defined axially inward of said first polygonal recess in view of Bollinger which would make the tool capable of receiving different sized socket drives and as a result, a more universal tool that could be used with multiple standard socket drives and eliminating the need for a specialized tool to drive the spud wrench or a slide bar that may not fit in specific uses of the tub wrench (Answer 5).

As such in our view, the references are properly combinable.

The rejection in this case is based on the combined teachings of

Battrick, Machovsky, Duke and Bollinger. Appellant's arguments largely relate to the individual teachings of the references. An applicant cannot show non-obviousness by attacking references individually where, as here, the rejections are based on a combination of references. *In re Keller*, 642

F.2d 413, 426 (CCPA 1981). In this regard, we are not persuaded by Appellant's argument that the Examiner erred in rejecting the claims because Machovsky is a single ended tool not a double ended tool like Battrick. Machovsky is not relied on for teaching a double ended tool, the Examiner relies on Duke to teach a double ended tool. In addition, we are not persuaded by Appellant's argument that the Examiner erred in rejecting the claims because Duke does not teach engagement with a socket drive. Machovsky is relied on for teaching engagement with a socket drive. Further, we are not persuaded of error on the part of the Examiner by the Appellant's argument that the Examiner erred in rejecting the claims because Bollinger is not a spud wrench and is a one ended tool. Battrick is

1 relied on for teaching a spud wrench and Duke is relied on for teaching a
2 double ended tool.

3 Lastly, we are not persuaded of error on the part of the Examiner by
4 Appellant's argument that the use of a second recess in Duke would teach
5 away or destroy the Duke reference. The rationale of the Examiner does not
6 rely on modifying the Duke tool in accordance with the teachings of the
7 other references. Rather, the Examiner relies on modifying the Battrick tool
8 in accordance with the teachings of the other references.

9 In view of the foregoing, we will sustain the Examiner's rejection of
10 claim 10. We will also sustain the rejection as it is directed to claims 19-21
11 because the Appellant has not argued the separate patentability of these
12 claims.

13 In regard to claim 11, we are not persuaded of error on the part of the
14 Examiner by Appellant's argument that none of the cited references disclose
15 or suggest a solid wrench body. We agree with the Examiner that the phrase
16 "solid wrench body" is broad enough to cover the wrench bodies disclosed
17 in Battrick, Machovsky and Duke as these wrench bodies have three
18 dimensions that are firm, hard, or compact in substance. To the extent that
19 the Appellant is arguing that the recitation of a solid wrench body relates to
20 a wrench body without internal cavities or holes, we note that the
21 Appellant's wrench body includes holes at the end thereof and a hole 32 to
22 accept a shaft.

23 In addition, the record does not demonstrate, or even allege, that the
24 use of a non-hollow wrench body rather than a hollow wrench body solves a
25 stated problem or presents new or unexpected results and therefore the use

1 of a non-hollow wrench body would have been an obvious matter of design
2 well within the skill of the ordinary artisan. *See In re Kuhle*, 526 F.2d 553
3 (CCPA 1975)).

4 As such, we will sustain the Examiner's rejection as it is directed to
5 claim 11.

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7 The decision of the Examiner is affirmed.

8 No time period for taking any subsequent action in connection with
9 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.
10 § 1.136(a)(1)(iv) (2007).

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15 AFFIRMED

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Appeal 2008-1678
Application 10/602,406

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